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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fifteenth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)*
OF THE 46th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 29 November 1996, at 4.05 p.m.

Chairperson: Mr. ALSTON

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* The summary record of the first part (closed) of the meeting appears as document E/C.12/1996/SR.46.

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The public meeting was called to order at 4.05 p.m.

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 3) (continued)

Draft optional protocol to the Covenant (E/C.12/1996/CRP.2/Add.1) (continued)

1. The CHAIRPERSON invited the Committee to resume its consideration of the draft articles in paragraphs 38 and 40 of the revised version of its draft report, contained in document E/C.12/1996/CRP.2/Add.1, concerning the optional protocol.

2. Mr. SIMMA proposed, in accordance with a suggestion he had received from an NGO, that the words "or individuals or groups acting on their behalf" should be added at the end of article 1, in order not to exclude the NGOs, which did play a very important role.

3. The CHAIRPERSON suggested that the words "or who represent or claim to be victims of such a violation" should be added at the end of article 1.

4. Mr. CEAUSU, supported by Mr. MARCHAN ROMERO, said that it would be preferable to lay down the principle of the Committee's competence from the outset, in the following words: "A State party ... recognizes the competence of the Committee to receive and examine communications alleging that individuals or groups are victims ...". That would avoid the use of the word "from", which related to the procedure for submitting communications, a matter that would be dealt with in article 2.

5. The CHAIRPERSON pointed out a problem with the initial wording, which meant literally that, for a group of persons to be able to submit a complaint, all its members would have to be able to claim that they were victims of a violation.

6. Mr. SIMMA said that he shared Mr. Ceausu's view. He proposed that article 1 should read, "A State party ... recognizes the competence of the Committee to receive and examine communications in accordance with the following articles:"; article 2 would deal with the rights of individuals or groups.

7. Mr. KOUZNETSOV asked about the representation of a group's interests. Could a group be represented by people acting on their own initiative or would such representation need to be subject to written authorization? If so, that should be specified.

8. The CHAIRPERSON said he beleived the Committee could agree in principle on the following wording for article 1: "A State party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and examine communications in accordance with the provisions of the Protocol."

9. The Chairperson's suggestion was adopted.

10. The CHAIRPERSON said that a reference to the victim being represented by an individual or by a group might be added to article 2, paragraph 1, which would also stipulate that the individual or group in question must be subject to the State party's jurisdiction.

11. Mr. MARCHAN ROMERO said he agreed with the principle but that, in order to make the text clearer, he would prefer the end of the paragraph to state that the complaint could be submitted directly or through individuals or groups representing the interested party or parties.

12. Mr. SIMMA recommended the greatest caution. Representing an individual or a group was a much narrower and precise concept than acting on the individual's or group's behalf. For example, a lawyer "represented" his client, and an NGO could "act on behalf" of the inhabitants of favelas or trade unions. Could it "represent" them? That was a delicate issue and would be better dealt with in the Committee's rules of procedure.

13. The CHAIRPERSON said that in his view, if the problem was worthy of being raised and studied, it could hardly be resolved other than in the context of the rules of procedure.

14. Mrs. JIMENEZ BUTRAGUEÑO said that she preferred the expression "act on behalf of", which did not exclude NGOs.

15. The CHAIRPERSON pointed out that the Committee had not yet reached the stage of drafting the final version of an authoritative text. If it had been at that stage, it would have been appropriate to say that, by using the expression "act on behalf of", the Committee wished to establish the fact that there had to be a link between the victim and the person or organization defending him, without totally excluding individuals or groups acting on behalf of someone who was unable to give authorization.

16. Mr. SIMMA said that he would prefer the Committee to speak of acting "on behalf of" the victim and state, as suggested by the Chairperson at the preceding meeting: "Any individual or group which claims to be a victim, or to act on behalf of a victim, ...", even if that meant giving the expression its broadest interpretation. That having been said, the problem could be settled at a later stage.

17. Mr. AHMED said it should be stated explicitly that a group which defended the interests of an individual or another group must have the explicit authorization of the interested party or parties; otherwise, the Committee would risk seeing an NGO from region A claim to defend, on its own initiative, the interests of a group from region B.

18. Mr. MARCHAN ROMERO said that, since the key factor of recourse to the Committee was the violation of a right, it was for the person who believed himself to have been injured to initiate the procedure, either directly or through an individual or group; the person or persons defending him should deal only with the specific violation of which he had been a victim.

19. Mrs. BONOAN-DANDAN asked what would happen if, for example, a group of rural women, with the help of a national NGO affiliated with an international

NGO, asked the international NGO to submit their case to the Committee? Would the Committee declare admissible a communication transmitted in that way?

20. The CHAIRPERSON said he believed Mr. Ahmed was saying that the international NGO should have received official authorization from the group of rural women in question. He noted that one restrictive aspect of the initial wording of article 1, the expression "subject to its jurisdiction", had been deleted.

21. Mrs. JIMENEZ BUTRAGUEÑO said that, by requiring explicit authorization from the victims, the Committee would be depriving many of them of the assistance it was supposed to be able to give them. Such a requirement risked depriving the protocol of its meaning.

22. Mr. SIMMA said that the problems that had been raised were too sensitive and complex to be settled hastily. At the previous meeting, when the Committee had discussed paragraph 25 of the revised version of Mr. Alston's report on the draft optional protocol, the discussion on the definition of groups entitled to submit a complaint had not led to a decision. The task at hand was to make a clear distinction between two related but separate issues: on the one hand, the criteria for determining the status of victim in the case of a group, and, on the other, the conditions under which victims might authorize third parties to act on their behalf and represent them.

23. The CHAIRPERSON said he believed the Committee was unanimous in saying, on the one hand, that individuals or groups of individuals who were victims of a violation of one of the rights set forth in the Covenant could submit communications to the Committee on the express condition that they were subject to the jurisdiction of the State party in question and, on the other hand, that a third party, such as an NGO, could submit a complaint to the Committee provided a link existed between that third party and the victims.

24. The Committee therefore had to define the nature of that link. He personally did not believe that the third party in question had to be "officially authorized" to act on behalf of the victims or that it, too, had to be subject to the jurisdiction of the State party concerned, for that would run the risk of limiting the scope of the optional protocol.

25. Mr. SIMMA said that he would prefer the expression "communication submitted on behalf of the victim" to be placed at the beginning of the protocol, in order not to limit the Committee's room for manoeuvre from the outset. It might at a later stage, when considering admissibility for example, determine whether the third party was in fact entitled to act on behalf of the victim. It would be excessively legalistic to speak of representing the victim.

26. Mr. AHMED said that in any event the Committee must be absolutely certain that the victim had in one way or another expressly authorized the third party in question to act on his or her behalf. Otherwise, any NGO could claim to be working for the interests of a victim without the victim's knowledge or even to the victim's detriment.

27. Mr. MARCHAN ROMERO agreed that the Committee must be sure that the victim had expressed the desire to be represented by a third party. Allowing any group or organization to submit communications to the Committee would run the risk of deterring a large number of States from exceeding to the optional protocol.

28. Mrs. JIMENEZ BUTRAGUEÑO said she believed that fear unjustified, since internal remedies would have to be exhausted before the Committee could be addressed.

29. The CHAIRPERSON said he took it that the members of the Committee agreed that a third party could submit communications to the Committee only on certain conditions, and that, especially, there must be a direct link between that third party and the victim. He invited the members of the Committee to think about the nature of that link and to continue their discussion at the following meeting.

30. He invited the Committee to take a decision on the questions raised in paragraphs 28 and 33 of the revised version of the Committee's draft report (E/C.12/1996/CRP.2/Add.1).

31. On the question whether the communications procedure should also apply to article 1 (right to self-determination), he noted that the right to self-determination could be the subject of communications submitted under the first optional protocol to the International Covenant on Civil and Political Rights. In practice, however, the Human Rights Committee had adopted a careful or restrictive approach in that connection.

32. Mr. SIMMA said that the Committee should not prejudge reservations which the Commission on Human Rights might make to the draft optional protocol the Committee would be submitting to it. The Committee should be realistic but not timorous. He therefore proposed retaining the wording of article 1 that appeared in document E/C.12/1994/12, which spoke of a violation "of any of the rights recognized in the Covenant".

33. Mr. CEAUSU said he did not believe it would be wise to imply that the right to self-determination could be the subject of communications. Although it was natural for the Human Rights Committee, whose task was to ensure respect for political rights, to have adopted such an approach, it would be difficult to understand why the Committee on Economic, Social and Cultural Rights should act similarly when the rights with which it was concerned were of a different nature. He proposed, therefore, that the wording adopted should be "of any of the specific rights recognized in the Covenant".

34. The CHAIRPERSON noted that the right of peoples to self-determination was set forth in article 1 of the Covenant and that in article 2, paragraph 2, the States parties undertook to guarantee that the rights enunciated in the Covenant would be exercised without discrimination.

35. Mr. CEAUSU said that the prohibition of discrimination applied to the exercise of economic, social and cultural rights proper, especially in the fields of labour, health, social protection and education.

36. Mr. SIMMA said that the right to self-determination was not explicitly mentioned in article 1 of the draft optional protocol. When it considered communications, therefore, the Committee might either totally exclude that right, or retain only the aspects that were directly related to the exercise of the economic, social and cultural rights set forth in the Covenant.

37. The CHAIRPERSON said that such a case might arise, for example, when a people was deprived of its means of subsistence, in violation of article 1, paragraph 2, of the Covenant. He emphasized that the draft optional protocol to be submitted to the Commission should be realistic if the Committee wanted it to be accepted by a majority of States.

38. Mr. CEAUSU pointed out that the reason why the Covenant on Economic, Social and Cultural Rights mentioned the right to self-determination was because it had been adopted at a time when many colonized peoples had been achieving independence. Times had changed, however, and if the optional protocol authorized any minority to claim the right to self-determination, it would never be adopted. It would therefore be preferable for it to be limited to economic, social and cultural rights.

39. Mr. SIMMA said he realized that the self-determination issue was a sensitive one for a number of countries currently dealing with minority problems, but the Committee could not deny the issues arising from "internal self-determination", whereby groups within a State could claim the right to use economic resources or achieve social and cultural fulfilment.

40. The CHAIRPERSON said that the Committee was free to take political realities into account when considering communications, like the Human Rights Committee, which, although it was quite at liberty to consider communications on the right to self-determination, had shown some restraint in doing so. The Committee must avoid a situation where article 1 of the Covenant would be treated differently from the other articles.

41. Mr. MARCHAN ROMERO said he would like to know whether the final provisions of the optional protocol would offer States the opportunity to make reservations. If so, there would be no difficulty in the optional protocol covering all of the articles in the Covenant. All the rights recognized in the Covenant would thus be given the same treatment and the Committee would not run the risk of being inundated with communications on the right to self-determination, since very few cases would overcome the obstacle of exhaustion of available internal remedies.

42. The CHAIRPERSON noted that article 15 of the previous version of the draft optional protocol had indicated that no reservations to the protocol were authorized. It was obviously understood that if the Committee opted for an "á la carte approach" it would no longer be able to rule out the possibility of reservations.

43. Mr. SIMMA said the Committee should make as much headway as possible in examining the text of the draft optional protocol itself and provide detailed explanations of its discussions in the commentaries accompanying the draft. As he was eager for a consensus to be reached, he proposed that article 2, paragraph 1, should refer to the violation of "any of the economic, social and

cultural rights recognized in the Covenant"; that would make it obvious that only the economic, social and cultural aspects of the right to self-determination could be the subject of communications.

44. The CHAIRPERSON said that the word "specific", proposed by Mr. Ceausu, might be misinterpreted, and that Mr. Simma's proposal was an acceptable compromise.

45. Mr. Simma's proposal was adopted.

46. Mr. SIMMA proposed that the commentaries accompanying the text of the draft optional protocol should include a sentence indicating that most of the members of the Committee had recognized the problem connected with the question of the right to self-determination and had wanted only its specifically economic, social and cultural aspects to be the subject of communications.

47. Mr. CEAUSU said that the commentaries should also contain a sentence indicating that the civil and political aspects of the right to self-determination should remain within the competence of the Human Rights Committee.

48. Mr. Simma's and Mr. Ceausu's proposal was adopted.

49. Mr. SIMMA said that, regarding the question of an "á la carte approach", it was not for the Committee to tell States parties that they could choose whether or not to accept the application of the optional protocol to a particular right recognized by the Covenant. All the articles in the Covenant contained aspects that were disputable in a court of law, and it would be dangerous to exclude a particular article a priori.

50. Mr. CEAUSU noted that the Commission and the Economic and Social Council would be holding discussions on the rights to which the optional protocol should apply. Under those circumstances, the Committee would be wise to propose a formula that avoided any controversy. Article 1 of the protocol might contain a paragraph 2, to read: "When they ratify the Protocol, States parties may state that they are excluding a particular article of the Covenant from the scope of the Protocol, with the exception of articles ...". It would then be for the intergovernmental body that would be adopting the instrument to determine which articles could not be excluded from the scope of the protocol. It should also be borne in mind that in excluding a particular article of the Covenant from the scope of the protocol, a State would not be considering that article to be unacceptable, but would simply be refusing to accept consideration of communications in that area. In any event, the State in question would remain bound by the obligations it had assumed on ratifying the Covenant.

51. Mr. ADEKUOYE pointed out that States parties had different levels of economic and social development and that they were obligated to achieve progressively the realization of the rights recognized in the Covenant to the maximum of their available resources. It would not be realistic to ask certain States also to accept the application of the protocol to all the rights enshrined in the Covenant. Some Governments might choose, for example,

to stress education and temporarily suspend efforts on the exercise of the other economic, social and cultural rights. He therefore supported Mr. Ceausu's proposal.

52. Mr. SIMMA said Mr. Ceausu's proposal would be quite appropriate if the Committee had reached the stage of the final drafting of the draft protocol. That was not the case, however, and the task at hand was simply to propose a text for the Commission to amend as it saw fit. Nevertheless, the Committee had a philosophy to defend, to the effect that all the rights recognized in the Covenant were equally important and contained elements that were disputable in a court of law. For that reason, Mr. Ceausu's proposal should be taken into account in the commentaries on the draft protocol, but not in the text of the draft itself.

53. Moreover, different countries' stages of development should not be used to exclude an entire article of the Covenant from the scope of the protocol. That aspect should be taken into consideration in the Committee's decisions. It should be noted in that connection that the Committee was already adopting different approaches according to whether the right whose application it was considering was to be exercised in Mali, Germany or Hong Kong.

54. Mr. MARCHAN ROMERO said he was in favour of the protocol applying to all the articles of the Covenant. After all, when the States parties had ratified the Covenant, they had pledged to respect all the rights set forth in it. In addition, article 2 of the Covenant permitted the implementation of the rights recognized in the Covenant to be limited by the resources available to the State party in question. According to the provisions of article 2, therefore, there could be a violation of the Covenant only if the State had not honoured its commitments.

55. Mr. ADEKUOYE said he would like to know who would determine whether sufficient resources had been allocated to implementing a particular right recognized in the Covenant. He feared that many States would have difficulty accepting the draft optional protocol if they could not choose the rights to which it would apply.

56. Mr. CEAUSU noted that his proposal would enable States temporarily to exclude certain rights from the scope of the protocol while they were gradually striving for the full exercise of those rights.

57. Mr. SIMMA said that States should not be given the possibility of excluding any right from the scope of the protocol and that all States would have to acknowledge that certain fundamental aspects of each of the rights recognized in the Covenant were disputable in a court of law. It would then be for the Committee to establish legal precedents and determine whether certain aspects of the rights recognized in the Covenant could be the subject of violations.

58. Mrs. BONOAN-DANDAN said the Committee should clearly determine the approach it intended to adopt in defining a violation of the rights recognized in the Covenant, if it did not want to risk contradicting itself or spreading confusion.

The meeting rose at 6 p.m.